

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7029

BILL NUMBER: HB 1360

NOTE PREPARED: Jan 15, 2008

BILL AMENDED:

SUBJECT: Mortgage lending issues.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ___**GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Pending

Summary of Legislation: Requires the homeowner protection unit (unit) within the attorney general's office to establish a toll free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. Requires the unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies. Requires the department of local government finance to revise the sales disclosure form for real estate conveyances to include: (1) the application forms for the homestead credit and the mortgage property tax exemption; and (2) the name and license or certificate number of each regulated professional involved in the transaction. Requires county assessors to submit sales disclosure form data to the department of insurance. Requires the department of insurance to establish and maintain a data base that serves as a central repository for the sales disclosure form data submitted. Requires the department of insurance to make the information in the data base available to appropriate law enforcement and regulatory agencies. Requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the department of local government finance that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property tax exemption, in the case of a refinancing; and (3) collect and file the completed and signed form with the appropriate county official. Provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer. For purposes of the adjusted gross income tax, excludes from a taxpayer's adjusted gross income an amount equal to the amount of any debt forgiven by a creditor with respect to mortgaged property of the taxpayer that is sold during the taxable year: (1) in a foreclosure proceeding; or (2) for an amount less than the amount of the outstanding mortgage

obligation. Provides a credit against the financial institutions tax or the adjusted gross income tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. Provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability. Specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). Specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. Prohibits the commissioner from releasing the results of a national criminal history background check to a private entity. Allows the commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. Increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. Eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. Specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. Prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. Prohibits a person from performing specified acts in connection with a contract for the services of a loan broker. Provides that first lien mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC). Provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. Provides that for a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount. Provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. Requires a creditor or mortgage servicer to respond to a written offer made in connection with a proposed short sale of mortgaged property not later than 10 calendar days after the date of the offer. Provides that a creditor that offers a nontraditional or subprime mortgage transaction must exercise prudent underwriting practices to determine the debtor's reasonable ability to repay the mortgage transaction at its fully indexed rate. Requires a creditor that offers a subprime mortgage transaction to establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage. Requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least \$300,000 with the department of financial institutions. For an adjustable rate mortgage, requires a creditor to provide a one page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. Provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage. Specifies that a violation of the: (1) home loan practices act; or (2) the provisions of the UCCC concerning mortgage transactions; is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices or mortgage transactions, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. Provides that any civil penalties collected by the attorney general shall be deposited in the home owner protection unit account in the general fund. Prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into

the prospective borrower's creditworthiness. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor. Requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing. Increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract. Enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony. Increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000. Requires the real estate appraiser licensure and certification board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. Prohibits the board from releasing the results of a national criminal history background check to a private entity. For a mortgage foreclosure proceeding initiated after June 30, 2008, requires: (1) the clerk of the court to certify to the sheriff a copy of the judgment or decree not later than five business days after the praecipe is filed; and (2) the sheriff to conduct a sale of the property not later than 90 days after receipt of the judgment or decree. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the Indiana housing and community development authority to provide, not later than November 1, 2008, a report to the legislative council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. Requires the securities commissioner and the director of the department of financial institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Repeals provisions that exclude mortgage transactions from the UCCC. Makes conforming changes.

Effective Date: Upon passage; July

Explanation of State Expenditures: *As of the above date, the fiscal analysis of this bill has not been completed. Please contact the Office of Fiscal and Management Analysis for an update of this fiscal impact statement.*

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected:

Information Sources:

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